

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Norfolk Division

**GOVERNMENT'S REPLY TO DEFENDANT'S MOTION
TO REDUCE SENTENCE PURSUANT TO TITLE 18 U.S.C. § 3582(c)**

Comes now the United States of America, by Sherrie S. Capotosto, Assistant United States Attorney, and responds to the defendant's Motion for Sentence Reduction. The United States agrees that the defendant is eligible for relief, and that his recalculated guidelines would entitle him to a sentence of 63 months, in accordance with the chart set forth in the defendant's Motion on pages 2 and 3. However, the United States does not agree that a "time-served" sentence is appropriate at this time. In its calculation, the Public Defender's Office subtracted 15 months from the Bureau of Prison's projected release date (based on the difference between his earlier sentence of 78 months and the present recommendation of 63 months), however the United States disagrees with the Public Defender's conclusion that the defendant would be entitled to be released on November 1, 2011. In short, the longer (previous) sentence results in a larger amount of *projected* good-time, and therefore, should not be used as a benchmark for subtracting the difference in the two sentences.¹ Instead, based on the percentage of good-time

¹ It is the United States understanding that “good time” is calculated by the Bureau of Prisons as a percentage of the total sentence to be served. Therefore, if the total sentence to be served is reduced, then the proportionate share of good time credit should be reduced accordingly.

calculated by the Bureau of Prisons (currently 13.5% of this defendant's sentence), it is the United States' position that the defendant would not be eligible for release until approximately November 20, 2011, based on the following formula:

Earlier sentence

Custody date:	May 4, 2007
Original sentence:	78 months (2,372 days)
Full sentence release date:	November 4, 2013
BOP good-time release date:	December 18, 2012
Percentage of good-time:	$321 \text{ days} \div 2,372 \text{ days} = 13.5\%$

Recalculated sentence

Custody date:	May 4, 2007
New sentence:	63 months (1,915 days)
Full sentence release date:	August 4, 2012
Projected good-time release date:	November 20, 2011
Percentage of good-time:	$258 \text{ days} \div 1,915 \text{ days} = 13.47\%$

It is also important to note that good time credit is necessarily contingent on continued good behavior and therefore, an easier matter for the Bureau of Prisons to assess and apply, rather than this Court, the United States, or the defense attorney.

Based on the foregoing, the United States respectfully requests that this Court re-sentence the defendant to 63 months, rather than a sentence of "time served." This would allow the Bureau of Prisons to calculate the defendant's new projected release date accordingly based on

the new sentence and the defendant's conduct in the interim.

Respectfully submitted,

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United States Attorney

By: /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 18, 2011, I electronically filed the foregoing Response with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following: Larry M. Dash, Assistant Federal Public Defender, Office of the Federal Public Defender, 150 Boush Street, Suite 403, Norfolk, Virginia 23510.

/s/
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